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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/538,569	06/15/2005	Edwin Rijpkema	NL021331	9459
65913	7550	03/11/2009		
NXP, B.V. NXP INTELLECTUAL PROPERTY DEPARTMENT M/S41-SJ 1109 MCKAY DRIVE SAN JOSE, CA 95131			EXAMINER MITCHELL, DANIEL D	
			ART UNIT	PAPER NUMBER
			2419	
			NOTIFICATION DATE	DELIVERY MODE
			03/11/2009 ELECTRONIC	

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

ip.department.us@nxp.com

**Advisory Action
Before the Filing of an Appeal Brief**

Application No. 10/538,569	Applicant(s) RIJPKEMA, EDWIN
Examiner DANIEL MITCHELL	Art Unit 2419

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 10 February 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 1-19.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See continuation sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

/Chirag G Shah/
Supervisory Patent Examiner, Art Unit 2419

Argument 1: In regards to the argument that the modification of the primary reference would render the invention of the primary reference unsatisfactory for its intended purpose, the primary reference only teaches a method for congestion control which is applied to various types of packet. However the combination teaches the improvement upon the primary reference by providing contention resolution (not congestion control which is argued by the applicant) to improve the performance of the packet switch Kilkki - col. 5 line 49 to col. 6 line 2. Therefore the manner which congestion control is executed is irrelevant as argued by the applicant.

Argument 2: In regards to the argument that the primary reference teaches away from the proposed modification, the primary reference Kilkki a method for congestion control by computing priority based on the buffer occupancy level - Kilkki col. 6 lines 27-42. Kilkki does not teach away from managing contention resolution by a single process. Kilkki discloses col. 17 lines 7-13 a unit for executing a round robin method, in order to avoid contention of the an output port. The Hellwig reference is included to improve the switch of the Kilkki reference by providing a method for collision free transmission through switch by providing contention resolution (not to be confused with congestion control) to all the port of the switch col. 7 lines 33-37. The motivation for this combination is to execute a switch with the highest possible throughput with the lowest possible delay time and simultaneous freedom from blocking - Hellwig col. 2 lines 7-13.

Argument 3: A valid reason for modifying the Kilkki reference is to implement a method of contention resolution (not congestion control as argued by the applicant). Hellwig in col. 5 lines 49-63 teaches that contention resolution would solve the problem of internal blocking, which improves the switch of the Kilkki reference. The motivation for the combination is to execute a switch with the highest possible throughput with the lowest possible delay time and simultaneous freedom from blocking - Hellwig col. 2 lines 7-13...

Argument 4: The Hellwig reference teaches one contention resolution process for all of the ports of a switch. The applicant defines [par. 23 lines 4-8] a virtual port of a switch is any port that is coupled to a resource that performs functions associated with the switch. In the Hellwig reference col. 5 lines 49-65 teaches a switch 5 with a plurality of physical ports coupled to various resources of the switch (CR and crossbar matrix). The above citation does not exclude resources of the switch from being external to the switch. According to the definition of the specification, the physical ports of the Hellwig reference are virtual ports as well as physical ports under the control of one contention resolution unit with one contention resolution process.